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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,421	11/14/2003	David Lawrence	G08.146/U	2738

28062 7590 03/18/2008
BUCKLEY, MASCHOFF & TALWALKAR LLC
50 LOCUST AVENUE
NEW CANAAN, CT 06840

EXAMINER	
LIU, ALAN Y	

ART UNIT	PAPER NUMBER
3691	

MAIL DATE	DELIVERY MODE
03/18/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/713,421	LAWRENCE, DAVID	
	Examiner	**Art Unit**	
	ALAN LIU	3691	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 January 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9, 11-20, 23 and 24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9, 11-20, 23, and 24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *14 November 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

1. This communication is a second Office Action Final rejection on the merits. Amendment received on 1/18/2008 has been acknowledged. Claims 10, 21, and 22 have been cancelled. Claims 1, 4, 12, 19, and 20 have been amended. Claims 23 and 24 have been added. Claims 1-9, 11-20, 23, and 24 are pending and have been considered below.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-5, 9-15, and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gatto (6,681,211) in view of Jessop et al. (2003/0046095), "Why Analysts Still Matter" by Jon Birger, hereinafter referred to as Birger, and McConnell et al. (6,882,850).

As per claim 1, Gatto teaches a computerized apparatus for managing risk associated with earnings estimates for a company (Figure 1; Abstract), the apparatus comprising:

a computer server comprising a processor and a digital storage and accessible with a system access device via a communications network (Figure 1; server 160; Internet 120; col. 8, line 32, via analytical tool 130 is a processor; database 170).

executable software stored on the computer server and executable on demand, the executable software operative with the processor to cause the computer server to (col. 8, line 29, via analytical tool 130 comprises software):

receive into the digital storage data descriptive of multiple earnings estimates, each earnings estimate (col. 8, lines 7-10, via database 170 containing historical data relating to predictions including earning estimates);

generate a consensus estimate with the capability to exclude some earnings estimates (col. 17, lines 11-13 and 17-22, via based on exclusions, factors, rules, and factor weights, an enhanced composite estimate is generated that analysts can look at; col. 39, lines 26-37, discloses the capability to exclude one or more analyst estimates because of bias error) (Note: Examiner is construing a consensus estimate performed prior to filtering for bias to be the claimed “second” consensus estimate and the consensus estimate performed after filtering for bias to be the claimed “first” consensus estimate);

generate a suggested action based on consensus estimates (col. 31, line 29, via buy-sell recommendations; col. 17, lines 11-13 and 17-22, via based on exclusions,

factors, rules, and factor weights, an enhanced composite estimate construed as the "first" consensus estimate is generated that can be compared to the normal consensus estimate construed as the "second" consensus estimate and a new recommendation can be made; col. 1, line 54-63, via investors would want to make investment decisions off of an improved consensus estimate and also want to identify if there really is a bias, which can affect a decision to buy or sell).

However, Gatto fails to expressly disclose:

receiving into the digital storage data indicative of one or more business relationships comprising a bank and the company;

screening earnings estimates based on data indicative of a relationship between the bank and the company;

earnings estimates are generated by a respective bank.

Jessop et al. teaches a method for providing, analyzing, and visualizing corporate relationship information comprising:

receiving into the digital storage data indicative of one or more business relationships comprising a bank and the company (page 2, paragraphs 0027 and 0029, teaches information about relationships being stored in database 10).

Birger teaches that earnings estimates produced by banks can be affected by relationships they have with the companies (page 2, via "to win lucrative underwriting and merger-and-acquisition assignments, many firms appeased corporate clients by toning down negative research and playing up positive news").

Birger also teaches that earnings estimates are generated by a respective bank (page 2, via “sell-side analysts are captives of their investment banking departments”, analysts employed at banks are responsible for generating earnings estimates and recommendations).

From these teachings of Jessop et al. and Birger, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the computerized apparatus of Gatto to include the relationship information database as taught by Jessop et al. in order to track the relationships between companies and identification of bias based on business relationships as taught by Birger in order to see the effect that potentially biased earnings estimates may have on a consensus estimate. By storing relationship information into digital storage as taught by Jessop et al., the process of excluding estimates to calculate a composite estimate of Gatto could logically be modified to calculate a consensus estimate excluding earnings estimates with data indicative of a relationship between the bank and the company and then generating a suggested action based on the old and new estimates.

For example, there is an investor who wants to make an investment decision on a company (Gatto, col. 1, lines 54-63). Rather than relying solely on a standard consensus estimate, which is an average of all earnings estimates generated by different analysts, the investor could make a more informed decision based on a modified consensus estimate. Since banks often are involved in deals with companies, there is a tendency for analysts to produce more positive estimates for companies that their banks are working with as taught by Birger. Over-optimism is a potential problem

(Birger, page 4). By storing the relationship information as taught by Jessop et al., a modified consensus estimate could be calculated that excludes earnings estimates of banks with a potential for bias, i.e. having a relationship with the company. Thereafter, the investor could make a decision on the company based on the old and new estimates.

However, the Gatto, Jessop, and Birger combination fails to expressly disclose transmitting, to the bank, data comprising a message that the bank's earnings estimate is excluded from the first consensus estimate.

McConnell et al. teaches a method and system for zone-based capacity control where a message is sent to a subscriber indicating that one or more subscribers have been excluded (col. 10, lines 22-26).

From this teaching of McConnell et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the computerized apparatus for managing risk of the Gatto, Jessop, and Birger combination to include transmitting a message regarding an exclusion as taught by McConnell et al. in order to notify the bank that its earning estimate has been excluded.

As per claim 2, Gatto teaches the computerized apparatus wherein the executable software is additionally operative with the processor to cause the computer server to:

generate a second consensus estimate based upon the earnings estimates received, including the earnings estimates received from the bank with the data indicative of one or more business relationships with the company (col. 13, lines 13-18,

via user may obtain calculated data such as a consensus estimate, which includes all earnings estimates);

generate the suggested action based on the first consensus estimate and the second consensus estimate (col. 31, line 29, via buy-sell recommendations; col. 17, lines 11-13 and 17-22, via based on exclusions, factors, rules, and factor weights, an enhanced composite estimate is generated that can be compared to the normal consensus estimate and a new recommendation can be made; col. 1, line 54-63, via investors would want to make investment decisions off of an improved consensus estimate rather than a simple average).

As per claim 3, the combination of Gatto, Jessop, and Birger, as modified for claim 1 above, discloses all elements of the claimed invention, but fails to expressly disclose generating a marker to correlate with the existence of data indicative of one or more business relationships comprising the bank and the company.

Jessop et al. further teaches generating a marker to correlate with the existence of data indicative of one or more business relationships (Figures 2 and 3; via entering two company names and type of relationship, then viewing to see if a relationship exists).

From this teaching of Jessop et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the computerized apparatus of the Gatto, Jessop, and Birger combination to include generating a marker to indicate an existing business relationship as taught by Jessop et al. because it is useful to see which companies have relationships.

As per claim 4, the combination of Gatto, Jessop, and Birger, as modified for claim 1 above, discloses all elements of the claimed invention, but fails to expressly disclose receiving a request data relating to a business relationship between the bank and the company.

Jessop et al. further teaches receiving a request data relating to a business relationship (Figures 2 and 3; via entering two company names and type of relationship, then viewing the relationship).

From this teaching of Jessop et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the computerized apparatus of the Gatto, Jessop, and Birger combination to include receiving a request data relating to a business relationship as taught by Jessop et al. because it is useful to see the relationship between two companies.

As per claim 5, Gatto teaches that the suggested action comprises acquiring a security instrument for the company (col. 31, line 29, via buy-sell recommendations).

As per claim 9, Gatto teaches generating a modified suggested action based upon updated information (col. 7, lines 61-64; col. 8, lines 5-7, via database receives updates and analysts provide recommendations based on the database information).

However, Gatto fails to expressly disclose receiving updated information relating to the one or more business relationships.

Jessop et al. teaches receiving updated information relating to one or more business relationships (page 5, paragraph 0071, via information about relationships may be regularly updated from public and/or private sources).

From this teaching of Jessop et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the computerized apparatus of Gatto to include receiving updated information relating to one or more business relationships as taught by Jessop et al. because by receiving updated information on relationships, the system can adjust earnings estimates and modify suggested actions as needed.

As per claim 11, Gatto teaches that the executable software is additionally operative with the processor to cause the computer server to transmit data comprising a reason for exclusion (col. 16, lines 31-33, via reason column 1556).

As per claim 12, Gatto teaches a method for managing risk associated with earnings estimates for a company (Abstract), the method comprising:

receiving digital data descriptive of multiple earnings estimates into a computer storage (col. 8, lines 7-10, via database 170 containing historical data relating to predictions including earning estimates);

generating a first consensus estimate based upon the digital data descriptive of the multiple earnings estimates received and comprising the data descriptive of an earnings estimate generated by the bank conducting business with the company (col. 13, lines 13-18, via user may obtain calculated data such as a consensus estimate, which includes all earnings estimates);

generating a second consensus estimate based upon the digital data descriptive of the multiple earnings estimates received and excluding some of the data descriptive of the earnings estimates (col. 17, lines 11-13 and 17-22, via based on exclusions,

factors, rules, and factor weights, an enhanced composite estimate is generated that analysts can look at; col. 39, lines 26-37, discloses the capability to exclude one or more analyst estimates because of bias error) (Note: Examiner is construing a consensus estimate performed prior to filtering for bias to be the claimed "first" consensus estimate and the consensus estimate performed after filtering for bias to be the claimed "second" consensus estimate);

and generating an indication in human readable form of a suggested action based upon the first consensus estimate and the second consensus estimate (col. 31, line 29, via buy-sell recommendations; col. 17, lines 11-13 and 17-22, via based on exclusions, factors, rules, and factor weights, an enhanced composite estimate construed as the "second" consensus estimate is generated that can be compared to the normal consensus estimate construed as the "first" consensus estimate and a new recommendation can be made; col. 1, line 54-63, via investors would want to make investment decisions off of an improved consensus estimate and also want to identify if there really is a bias, which can affect a decision to buy or sell).

However, Gatto fails to expressly disclose receiving digital data descriptive of one or more indications of a bank conducting business with the company into a computer storage and screening earnings estimates based on data descriptive of the bank conducting business with the company;

Jessop et al. teaches a method for providing, analyzing, and visualizing corporate relationship information comprising:

receiving digital data descriptive of one or more indications of a bank conducting business with the company into a computer storage (page 2, paragraphs 0027 and 0029, teaches information about relationships being stored in database 10).

Birger teaches that earnings estimates produced by banks can be affected by relationships they have with the companies (page 2, via "to win lucrative underwriting and merger-and-acquisition assignments, many firms appeased corporate clients by toning down negative research and playing up positive news").

From these teachings of Jessop et al. and Birger, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method for managing risk associated with earnings estimates for a company of Gatto to include the relationship information database as taught by Jessop et al. in order to track the relationships between companies and identification of bias based on business relationships as taught by Birger in order to see the effect that potentially biased earnings estimates may have on a consensus estimate. By storing relationship information into digital storage as taught by Jessop et al., the process of excluding estimates to calculate a composite estimate of Gatto could logically be modified to calculate a consensus estimate excluding earnings estimates with data indicative of a relationship between the bank and the company and then generating a suggested action based on the old and new estimates.

For example, there is an investor who wants to make an investment decision on a company (Gatto, col. 1, lines 54-63). Rather than relying solely on a standard consensus estimate, which is an average of all earnings estimates generated by

different analysts, the investor could make a more informed decision based on a modified consensus estimate. Since banks often are involved in deals with companies, there is a tendency for analysts to produce more positive estimates for companies that their banks are working with as taught by Birger. Over-optimism is a potential problem (Birger, page 4). By storing the relationship information as taught by Jessop et al., a modified consensus estimate could be calculated that excludes earnings estimates of banks with a potential for bias, i.e. having a relationship with the company. Thereafter, the investor could make a decision on the company based on the old and new estimates.

However, the Gatto, Jessop, and Birger combination fails to expressly disclose transmitting, to the bank, data comprising a message that the bank's earnings estimate is excluded from the first consensus estimate.

McConnell et al. teaches a method and system for zone-based capacity control where a message is sent to a subscriber indicating that one or more subscribers have been excluded (col. 10, lines 22-26).

From this teaching of McConnell et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method for managing risk of the Gatto, Jessop, and Birger combination to include transmitting a message regarding an exclusion as taught by McConnell et al. in order to notify the bank that its earning estimate has been excluded.

As per claim 13, the combination of Gatto, Jessop, and Birger, as modified for claim 12 above, discloses all elements of the claimed invention, but fails to expressly

disclose generating digital data indicative of a business relationship between a bank and the company.

Jessop et al. further teaches generating digital data indicative of a business relationship (Figures 2 and 3; via entering two company names and type of relationship, then viewing to see if a relationship exists).

From this teaching of Jessop et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of the Gatto, Jessop, and Birger combination to include generating digital data indicative of a business relationship as taught by Jessop et al. because it is useful to see which companies have relationships.

As per claim 14, the combination of Gatto, Jessop, and Birger, as modified for claim 13 above, discloses all elements of the claimed invention, but fails to expressly disclose receiving a request for data descriptive of the business conducted comprising the bank and the company.

Jessop et al. teaches receiving a request for data descriptive of the business conducted (Figures 2 and 3; via entering two company names and type of relationship, then viewing the relationship).

From this teaching of Jessop et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of the Gatto, Jessop, and Birger combination to include receiving a request for data descriptive of the business conducted as taught by Jessop et al. because it is useful to see the relationship between two companies.

As per claim 15, Gatto teaches that the suggested action comprises acquiring a security for the company (col. 31, line 29, via buy-sell recommendations).

As per claim 19, Gatto teaches generating digital data comprising a message that the earnings estimate generated by the bank will be excluded and a reason for the exclusion (col. 16, line 23, via exclusion data is displayed in view; col. 16, lines 31-33, via reason column 1556).

As per claim 20, Gatto teaches computer executable program code residing on a computer-readable medium (col. 8, line 29, via software), the program code comprising instructions for causing the computer to:

receive multiple earnings estimates related to a company (col. 8, lines 7-10, via database 170 containing historical data relating to predictions including earning estimates);

generate a first consensus estimate based upon the earnings estimates received (col. 13, lines 13-18, via user may obtain calculated data such as a consensus estimate, which includes all earnings estimates);

generate a second consensus estimate based upon the earnings estimates received, but excluding an earnings estimate (col. 17, lines 11-13 and 17-22, via based on exclusions, factors, rules, and factor weights, an enhanced composite estimate is generated that analysts can look at; col. 39, lines 26-37, discloses the capability to exclude one or more analyst estimates because of bias error) (Note: Examiner is construing a consensus estimate performed prior to filtering for bias to be the claimed

“first” consensus estimate and the consensus estimate performed after filtering for bias to be the claimed “second” consensus estimate);

and generate a suggested action based upon the first consensus estimate and the second consensus estimate (col. 31, line 29, via buy-sell recommendations; col. 17, lines 11-13 and 17-22, via based on exclusions, factors, rules, and factor weights, an enhanced composite estimate construed as the “second” consensus estimate is generated that can be compared to the normal consensus estimate construed as the “first” consensus estimate and a new recommendation can be made; col. 1, line 54-63, via investors would want to make investment decisions off of an improved consensus estimate and also want to identify if there really is a bias, which can affect a decision to buy or sell).

However, Gatto fails to expressly disclose receiving one or more indications of a bank conducting business with the company and screening for bias because the earnings estimate excluded is received from the bank conducting business with the company.

Jessop et al. teaches a method for providing, analyzing, and visualizing corporate relationship information comprising:

receiving one or more indications of a bank conducting business with the company (page 2, paragraphs 0027 and 0029, teaches information about relationships being stored in database 10).

Birger teaches that earnings estimates produced by banks can be affected by relationships they have with the companies (page 2, via “to win lucrative underwriting

and merger-and-acquisition assignments, many firms appeased corporate clients by toning down negative research and playing up positive news").

From these teachings of Jessop et al. and Birger, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the computer executable program code of Gatto to include the relationship information database as taught by Jessop et al. in order to track the relationships between companies and identification of bias based on business relationships as taught by Birger in order to see the effect that potentially biased earnings estimates may have on a consensus estimate. By storing relationship information into digital storage as taught by Jessop et al., the process of excluding estimates to calculate a composite estimate of Gatto could logically be modified to calculate a consensus estimate excluding earnings estimates with data indicative of a relationship between the bank and the company and then generating a suggested action based on the old and new estimates.

For example, there is an investor who wants to make an investment decision on a company (Gatto, col. 1, lines 54-63). Rather than relying solely on a standard consensus estimate, which is an average of all earnings estimates generated by different analysts, the investor could make a more informed decision based on a modified consensus estimate. Since banks often are involved in deals with companies, there is a tendency for analysts to produce more positive estimates for companies that their banks are working with as taught by Birger. Over-optimism is a potential problem (Birger, page 4). By storing the relationship information as taught by Jessop et al., a modified consensus estimate could be calculated that excludes earnings estimates of

banks with a potential for bias, i.e. having a relationship with the company. Thereafter, the investor could make a decision on the company based on the old and new estimates.

However, the Gatto, Jessop, and Birger combination fails to expressly disclose transmitting, to the bank, data comprising a message that the bank's earnings estimate is excluded from the first consensus estimate.

McConnell et al. teaches a method and system for zone-based capacity control where a message is sent to a subscriber indicating that one or more subscribers have been excluded (col. 10, lines 22-26).

From this teaching of McConnell et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the computer executable program code residing on a computer-readable medium of the Gatto, Jessop, and Birger combination to include transmitting a message regarding an exclusion as taught by McConnell et al. in order to notify the bank that its earning estimate has been excluded.

4. Claims 6-7 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gatto in view of Jessop et al. and Birger as applied to claims 1 and 12 above, and further in view of the Barron's "Dictionary of Finance and Investment Terms", Fifth Edition, hereinafter referred to as Barron's.

As per claims 6 and 16, the Gatton, Jessop, and Birger combination disclose all elements of the claimed invention, but fails to expressly disclose that the suggested

action comprises acquiring a derivative which will be profitable if a price of a stock for the company declines within a predetermined period.

Barron's teaches a put option (page 482).

From this teaching of Barron's, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the computerized apparatus and method of the Gatto, Jessop, and Birger combination to include that the suggestion action comprise acquiring a put option as taught by Barron's because a put option is a derivative that can purchased and becomes profitable when the underlying stock's price declines. Additionally, options tend to be safer investments than purchasing the stock itself.

As per claims 7 and 17, the Gatton, Jessop, and Birger combination disclose all elements of the claimed invention, but fails to expressly disclose that the suggested action comprises acquiring a derivative which will be profitable if a price of a stock for the company increases within a predetermined period.

Barron's teaches a call option (page 76).

From this teaching of Barron's, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the computerized apparatus and method of the Gatton, Jessop, and Birger combination to include that the suggestion action comprise acquiring a call option as taught by Barron's because a call option is a derivative that can purchased and becomes profitable when the underlying stock's price increases. Additionally, options tend to be safer investments than purchasing the stock itself.

5. Claims 8 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Gatto, Jessop, and Birger combination in view of Barron's as applied to claims 6 and 16 above, and further in view of "Evaluating Alternative Stock Option Timing Strategies" by James McGuigan and William R. King, hereinafter referred to as McGuigan.

As per claims 8 and 18, the Gatton, Jessop, Birger, and Barron's combination discloses all elements of the claimed invention, but fails to expressly disclose that the predetermined period comprises 30 days following an announcement of company earnings.

McGuigan teaches one month options (page 567).

From this teaching of McGuigan, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the computerized apparatus and method of the Gatton, Jessop, Birger, and Barron's combination to include one month options taught by McGuigan because thirty days is a common expiration period for options and when an individual purchases an option, they can keep track of the company earnings from publicly available information prior to expiration to determine whether or not to exercise the option.

2. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gatto in view of Jessop et al. and Birger as applied to claim 1 above, and further in view of Ilnicki (7,069,434).

As per claim 23, the Gatto, Jessop, and Birger combination discloses all elements of the claimed invention, but fails to expressly disclose that the earnings

estimate received from the bank are excluded based on the bank being involved in a threshold amount of business with the company.

Ilnicki teaches a secure data transfer method and system with length of a business relationship as a criterion (col. 1, lines 41-45).

From this teaching of Ilnicki, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the exclusion of earnings estimates of the Gatto, Jessop, and Birger combination to include basing it on the length of a business relationship as taught by Ilnicki in order to define the threshold in determining whether a relationship is substantial enough to justify exclusion.

As per claim 24, the Gatto, Jessop, and Birger combination discloses all elements of the claimed invention, but fails to expressly disclose that the earnings estimates received from the bank are excluded based on the bank being involved over a threshold amount of time in a business relationship with the company.

Ilnicki teaches a secure data transfer method and system with length of a business relationship as a criterion (col. 1, lines 41-45).

From this teaching of Ilnicki, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the exclusion of earnings estimates of the Gatto, Jessop, and Birger combination to include basing it on the length of a business relationship as taught by Ilnicki in order to define the threshold in determining whether a relationship is substantial enough to justify exclusion.

Response to Arguments

3. Applicant's arguments filed 1/18/2008 have been fully considered but they are not persuasive.

Applicant's arguments with respect to claims 1, 12, and 20 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it is old and well known in the art that there may be bias when a bank produces an earnings estimate for a company that it has a relationship with and therefore, may affect the accuracy of the

estimate. It would be obvious to one of ordinary skill in the art at the time the invention was made to produce a consensus estimate excluding numbers that may be inaccurate.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALAN LIU whose telephone number is (571)270-5113. The examiner can normally be reached on Monday through Thursday, 8:30AM-6:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AL

/Hani M. Kazimi/

Primary Examiner, Art Unit 3691